



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[EPA-R09-OAR-2012-0936; FRL-9901-13-Region 9]**

**Designation of Areas for Air Quality Planning Purposes;**

**California; Morongo Band of Mission Indians**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California designated under the Clean Air Act for the national ambient air quality standard for one-hour ozone. EPA is also taking final action to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country of the Morongo Band of Mission Indians, California as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards.

**DATES:** This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0936 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy

location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ken Israels, Grants and Program Integration Office (AIR-8), U.S. Environmental Protection Agency, Region IX, (415) 947-4102, [israels.ken@epa.gov](mailto:israels.ken@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," "our," and "Agency" refer to EPA.

## **Table of Contents**

- I. Summary of Proposed Action
- II. Comments and Responses
- III. Final Action
- IV. Statutory and Executive Order Reviews

### **I. Summary of Proposed Action**

On January 2, 2013 (78 FR 51), EPA proposed to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California designated under the Clean Air Act (CAA or "Act") for the national ambient

air quality standard (NAAQS or "standard") for one-hour ozone.<sup>1</sup> EPA also proposed to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country<sup>2</sup> of the Morongo Band of Mission Indians, California ("Morongo Reservation") as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards. References herein to our "proposed rule" refer to our January 2, 2013 proposed rule.

Specifically, we proposed to correct an error in our October 7, 2003 (68 FR 57820) final action approving a request by the State of California ("California" or "State") to shift the boundary between the South Coast Air Basin and the Southeast Desert Air Basin (which includes Coachella Valley) eastward, and thereby relocate the Banning Pass area to the South Coast Air Basin from the Southeast Desert Air Basin. As explained in our proposed rule, the "error" pertained only to the Morongo

---

<sup>1</sup> Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

<sup>2</sup> "Indian country" as defined at 18 U.S.C. 1151 refers to: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Reservation, which is located within the Banning Pass, and which is the only Indian country affected by the relevant portion of our 2003 final action.

With respect to the one-hour ozone standard, EPA's 2003 action had the effect of moving the Morongo Reservation from the Coachella Valley portion of the "Southeast Desert Modified AQMA Area" ("Southeast Desert") to the "Los Angeles-South Coast Air Basin Area" ("South Coast") and changing the designations and classifications accordingly. Specifically, EPA's 2003 action had the effect of changing the ozone nonattainment area classification for the Banning Pass area, including the Morongo Reservation, from "Severe-17" to "Extreme".<sup>3</sup>

In connection with the 2003 final action, we erred by failing to recognize that, while EPA had authority to change the boundary of the South Coast with respect to Indian country under CAA sections 107(d)(3)(A)-(C), 301(a) and 301(d), it is apparent from the proposed and final rules in 2003 that EPA did not recognize that it was acting under that authority or that EPA appropriately considered the effect of the action on Indian

---

<sup>3</sup> While the one-hour ozone standard itself has been revoked, the NSR requirements that had applied to a nonattainment area for the 1997 eight-hour ozone standard based on that area's designation and classification for the one-hour ozone standard, at the time of designation for the 1997 eight-hour ozone standard, continue to apply to the area consistent with the requirements of EPA's phase I implementation rule governing the transition from the one-hour ozone standard to the 1997 eight-hour ozone standard and a related court decision.

country lands. EPA recognized only that the Agency was acting on a State request under section 107(d)(3)(D) and reviewed the request accordingly. However, tribes are sovereign entities, and not political subdivisions of states. Typically, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. With respect to the Morongo Reservation, EPA or the Morongo Tribe is the appropriate entity to initiate boundary changes, and in this instance, the Morongo Tribe initiated the change through a rulemaking request to EPA.

If EPA had considered such a boundary change with respect to the Morongo Reservation under the appropriate statutory authority (i.e., CAA sections 107(d)(3)(A)-(C), 301(a) and 301(d)), the Agency might well have declined to change the boundary with respect to the Morongo Reservation based on "planning and control considerations" given that emissions sources within the Morongo Reservation are subject to EPA jurisdiction whereas the emissions sources outside of the Reservation are subject to the jurisdiction of the South Coast Air Quality Management District (SCAQMD). In addition to the difference in jurisdiction, we might have declined to change the boundary given the associated decrease in the major source threshold and absence of a federal Indian country new source

review (NSR) program for new or modified stationary sources at the time. Therefore, under CAA section 110(k)(6),<sup>4</sup> we proposed to correct the error by rescinding our 2003 final action as it pertains to the Morongo Reservation and only as it pertains to the revoked one-hour ozone standard.

Second, in our proposed rule, under CAA sections 107(d)(3)(A)-(C), 301(a), and 301(d), we proposed to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate nonattainment area for the one-hour ozone standard and to classify the Morongo Reservation as "Severe-17," i.e., consistent with its prior classification when it was included in the Southeast Desert.<sup>5</sup> Third, also under CAA

---

<sup>4</sup> CAA section 110(k)(6) provides that: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public." We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

<sup>5</sup> Sections 107(d)(3)(A)-(C) provide that EPA may initiate the redesignation process "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate," and "promulgate the redesignation, if any, of the area or portion thereof." CAA section 107(d)(3) does not refer to Indian country, but consistent with EPA's discretionary authority in CAA sections 301(a) and 301(d)(4) to directly administer CAA programs, and protect air quality in Indian country through federal implementation, EPA is authorized to directly administer sections 107(d)(3)(A)-(C) and redesignate

sections 107(d)(3)(A)-(C), 301(a) and 301(d), we proposed to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard and to classify the Morongo Reservation as "Severe-17," i.e., consistent with its original classification when it was included in the South Coast.

In proposing the second and third actions described above, we applied the principles set forth in EPA's policy (referred to herein as the "Tribal Designation Policy") for establishing separate air quality designations for areas of Indian country.<sup>6</sup> Under the Tribal Designation Policy, where EPA receives a request for a boundary change from a tribe seeking to have its Indian country designated as a separate area, the policy indicates that EPA will make decisions regarding these requests on a case-by-case basis after consultation with the tribe.

As a matter of policy, EPA believes that it is important for tribes to submit certain information, including, among other items, a formal request from an authorized tribal official; documentation of Indian country boundaries to which the air quality designation request applies; and an analysis of a number

---

Indian country areas.

<sup>6</sup> See memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I-X, dated December 20, 2011, titled "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country."

of factors (referred to as a "multi-factor analysis,") including air quality data, emissions-related data (including source emissions data, traffic and commuting patterns, population density and degree of urbanization), meteorology, geography/topography, and jurisdictional boundaries.<sup>7</sup>

In May 2009, the Chairman of the Morongo Tribe submitted the Tribe's request for a separate ozone nonattainment area that included a multi-factor analysis addressing air quality data, emissions data, meteorology, geography/topography, and jurisdictional boundaries.<sup>8</sup> As such, although submitted prior to release of the Tribal Designation Policy, the Morongo Tribe's request for a boundary change to create a separate ozone nonattainment area, in conjunction with EPA's additional analysis found in our technical support document (TSD) for the proposed rule, represents the type of formal, official request and supporting information called for in the policy.

For the proposed rule, EPA noted that the Agency had recently reviewed the Morongo Tribe's multi-factor analysis in connection with designating the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard, and

---

<sup>7</sup> See Tribal Designation Policy, pages 3 and 4. The Tribal Designation Policy also states that, in addition to information related to the identified factors, tribes may submit any other information that they believe is important for EPA to consider.

<sup>8</sup> See letter from Robert Martin, Chairman, Morongo Band of Mission Indians, to Deborah Jordan, Director, Air Division, EPA Region IX, dated May 29, 2009.



concluded that EPA's analysis and recent decision to designate the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard was directly relevant to our consideration of whether to revise the boundaries of existing air quality planning areas to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards, and adopted the analysis and rationale previously relied upon by EPA in establishing the Morongo nonattainment area for the 2008 ozone standard. In doing so, we recognized that the three standards address the same pollutant, and thus share multi-factor analyses and considerations.<sup>9</sup>

Based on our review of air quality data, meteorology and topography, we observed that the Morongo Reservation experiences transitional conditions characteristic of a mountain pass area through which pollutants are channeled from a highly urbanized metropolitan nonattainment area to the west to the relatively less developed nonattainment area to the east. Considering the three factors of air quality data, meteorology, and topography, EPA concluded that the Agency could reasonably include the Morongo Reservation in either the South Coast nonattainment area

---

<sup>9</sup> EPA also noted that in using many of the same factors found in the 2008 ozone designations process, we are using factors that represent the most current information regarding meteorology, air quality, etc. in the area and therefore we believe serve the purposes of being representative for the previously established ozone standards.

to the west, or the Southeast Desert nonattainment area to the east, as EPA has done in the past for the one-hour ozone standard and the 1997 eight-hour ozone standard. Alternatively, EPA could establish a separate nonattainment area for the Morongo Reservation as it did for the 2008 eight-hour ozone standard.<sup>10</sup>

Taking into account the relative amount of emissions associated with activities on the Morongo Reservation and corresponding minimal contribution to regional ozone violations, we believed that under the circumstances present here, it would be appropriate to assign particular weight to the jurisdictional boundaries factor, consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy. Moreover, we noted that the Tribe has invested in the development of its own air program, including operation of weather stations and an air monitoring station, and has expressed interest in development of its own permitting program. Under the jurisdictional boundaries factor, we found that redesignation of the Morongo Reservation as a separate ozone nonattainment area for the one-hour ozone and 1997 eight-hour ozone standards would be appropriate. Therefore, consistent with the designation of the Morongo Reservation for the 2008

---

<sup>10</sup> See 77 FR 30088, dated May 21, 2012.

ozone standard, we proposed to revise the boundaries of the Southeast Desert one-hour ozone nonattainment area and the boundaries of the South Coast 1997 eight-hour ozone nonattainment area to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards.

Please see our proposed rule and TSD for additional background information about the Morongo Reservation and the regulatory context, as well as a more detailed explanation of our rationale for the proposed actions.

## **II. Comments and Responses**

Our proposed rule provided for a 30-day comment period. During this period, we received comments from the South Coast Air Quality Management District (SCAQMD or "District"), the Coachella Valley Association of Governments (CVAG), and from a private citizen. All three comment letters oppose EPA's proposed actions. We have summarized the comments and provide responses in the paragraphs that follow.

SCAQMD Comment #1: EPA's primary reason for wanting to reclassify Morongo as "severe-17" appears to be based on the fact that in "extreme" ozone areas, the major source threshold for VOC and NO<sub>x</sub> is 10 tons per year, whereas in "severe-17" areas it is 25 tons per year, thereby increasing the number of new or

modified sources subject to the emissions offset requirement. EPA's sole concern appears to be the availability of emission reduction credits (ERCs) for use as offsets. We are not sure that EPA's rationale, which appears to be based on economic considerations, is a proper basis for reclassification under CAA section 107(d)(3). Also, EPA has misinterpreted the law relative to availability of offsets for sources to be located on Morongo lands. Because Morongo is included within the South Coast District, the special provisions in state law and District rules regarding the transfer and use of inter-district and inter-basin offsets are inapplicable.

EPA Response to SCAQMD Comment #1: Our proposed rule proposed two separate actions - (1) an error correction (of a 2003 final action) and (2) boundary revisions (for one-hour and 1997 eight-hour ozone NAAQS). EPA considered the issue of availability of ERCs for use as offsets for new or modified sources on the Morongo Reservation in the context of the proposed error correction action, not the boundary revisions action, and the statutory basis for consideration of this issue was CAA section 110(k)(6), not section 107(d)(3).

The District is correct that, in our proposed rule, we identified restrictions in state law and District rules regarding the availability of ERCs for use to comply with the

emissions offset requirement for new or modified major sources on Morongo lands as one of the adverse regulatory consequences for the Tribe of our 2003 final action that persuaded us to propose the error correction. However, the availability of ERCs was not the only adverse regulatory effect of our 2003 action. We recognized that the primary adverse regulatory effect was the lowering of the applicable VOC and NO<sub>x</sub> major source threshold from 25 tons per year to 10 tons per year that resulted from the 2003 transfer of the Banning Pass (including the Morongo Reservation) from the Southeast Desert "severe" ozone nonattainment area to the South Coast "extreme" ozone nonattainment area. See 78 FR 51, at 54-55. The lower threshold meant that more new or modified sources proposed on Morongo lands would be considered "major" and thus subject to the emissions offset requirement in the first instance. Based on our understanding of the state and District restrictions on the use of emission reduction credits, we believed at the time of the proposed rule that the adverse regulatory effect of lowering the threshold was exacerbated by the uncertainty associated with the availability of ERCs generated outside of the Morongo Reservation to offset emissions of new or modified sources on the Morongo Reservation.

We appreciate the District's clarification of state law and

District rules regarding inter-district and inter-basin transfer of ERCs. Based on the District's clarification, we now understand that under state law and District rules governing inter-district or inter-basin transfer of ERCs, the meaning of "District" is geographic in nature and not jurisdictional, and thus, sources on Morongo lands are considered within the "District" for the purposes of using ERCs to meet the emissions offset requirement although such sources are not subject to District jurisdiction and thus may purchase and use ERCs generated anywhere in the South Coast without prior approval from the State or District.

In light of SCAQMD's interpretation of state and District law, we no longer find that such law presents an obstacle to permitting of new or modified stationary sources on the Morongo Reservation. While ERCs may be available for such sources in the same manner as they are for sources in the South Coast outside of the Morongo Reservation, the more fundamental, adverse consequence of lowering the major source threshold from 25 tons per year to 10 tons per year remains a sufficient adverse consequence in and of itself to persuade us to take final action to correct our 2003 final action as it pertains to the one-hour ozone standard and as it pertains to the Morongo Reservation.

SCAQMD Comment #2: EPA's current proposal is to separate the

Morongo Reservation, which is currently within the South Coast Air Basin, as its own air quality planning area and to classify the area as "severe-17" for the one-hour and 1997 eight-hour ozone NAAQS. EPA should retain the Morongo Reservation in the South Coast Air Basin in accordance with EPA's rationale for approving California's request to revise the basin so that the Banning Pass - including Morongo - was included in the South Coast Air Basin. Now, as then, the Banning Pass - including Morongo - belongs in the South Coast Air Basin from an air quality perspective.

EPA Response to SCAQMD Comment #2: Our proposed rule includes two types of actions: an error correction and boundary revisions. The first action, under CAA section 110(k)(6), would correct the error by rescinding our 2003 boundary change action with respect to the Morongo Reservation and would thereby separate the Morongo Reservation from the South Coast and return the reservation back to the Southeast Desert ozone nonattainment area within which the reservation was located prior to EPA's 2003 action, but would not establish a separate Morongo ozone nonattainment area. The second type of action, under CAA section 107(d)(3) and CAA sections 107(d)(3)(A)-(C), 301(a) and 301(d), would establish a separate Morongo ozone nonattainment area for the one-hour and 1997 eight-hour ozone NAAQS. Because we are

finalizing both actions at the same time, the Morongo Reservation will not move back to the Southeast Desert nonattainment area but will instead become its own nonattainment area for the one-hour and 1997 eight-hour ozone standards.

With respect to our error correction action, the District accurately cites EPA's rationale for approving California's request to revise the boundaries to transfer the Banning Pass from the Southeast Desert to the South Coast in 2003: "We believe that Banning is more similar to the South Coast than the Coachella area, and that it would support efficient planning and control to move the federal boundary of the South Coast Air Basin eastward to encompass the Banning Pass area." 68 FR 48848, at 48850 (August 15, 2003). In our proposed rule, we explain that we do not find that we erred in 2003 in reviewing the State's request for a boundary revision, but we failed to recognize that, to the extent that our 2003 action affected Indian country, our action involved more than a response to a State request under CAA section 107(d)(3)(D).<sup>11</sup> It also involved an EPA-initiated boundary change action under sections

---

<sup>11</sup> As noted above, Tribes are sovereign entities, and not political subdivisions of States. Typically, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. With respect to the Morongo Reservation, EPA or the Tribe is the appropriate entity to initiate boundary changes, and in this instance, the Tribe initiated the boundary change through a request to EPA.



107(d)(3)(A)-(C), section 301(a), and 301(d)(4) because the State is not approved to administer CAA programs in Indian country. 78 FR 51, at 54. Our proposed rule also explains how evaluation of the same criteria used to approve the State's request would have differed for Indian country. *Id.* For instance, "planning and control considerations" while seamless from the standpoint of District jurisdiction over sources on state lands, would have differed for the Morongo Reservation because, at that time, EPA had not established a nonattainment NSR program for Morongo under which to review the greater number of new or modified sources deemed "major" by virtue of the boundary change.

In effect, through its 2003 boundary change request, the State of California was voluntarily seeking to expand the geographic boundary of the area (the South Coast) subject to the most stringent requirements under the CAA. While EPA would have little reason to disapprove such a state request, there is also little reason for EPA to force Indian country located in that geographic area to be consistent with the State's voluntary request.

With respect to our proposed action to establish a separate Morongo ozone nonattainment area, we are not applying the same criteria that we used to evaluate the State's boundary change

request, but rather are applying the criteria set forth in our Tribal Designations Policy. See pages 55 and 56 of our proposed rule. As described in greater detail in our proposed rule, we observe that the Morongo Reservation experiences transitional conditions characteristic of a mountain pass area and that we could reasonably have included the Morongo Reservation in either the South Coast or the Southeast Desert or established a separate Morongo nonattainment area. Given that emissions associated with the Morongo Reservation are minimal, we believe that it is appropriate to assign particular weight to the jurisdictional boundaries factor and thus are taking final action today, consistent with our proposed action, to revise the boundaries of the South Coast and Southeast Desert nonattainment areas to designate the Morongo Reservation as a separate Morongo nonattainment area for the one-hour and 1997 eight-hour ozone standards. (The Morongo Reservation is already a separate nonattainment area for the 2008 ozone standard.)

SCAQMD Comment #3: SCAQMD staff is concerned about the possible effects of separating and reclassifying the Morongo Reservation. EPA's action can only be intended to facilitate the construction and operation of new or expanded major sources on Morongo lands. As the Banning Pass is directly upwind of the Coachella Valley, any significant new emissions on Morongo lands could adversely

affect the Coachella Valley and its ability to maintain attainment of the ozone standard. EPA should analyze the air quality impacts of the proposed action on the Coachella Valley.

Response to SCAQMD Comment #3: With respect to nonattainment New Source Review (NSR), the effect of our actions today will be an increase in the major source threshold for ozone precursors, i.e., VOC and NO<sub>x</sub>, from 10 and 25 tons per year, for new or modified stationary sources proposed for construction and operation on the Morongo Reservation. As such, new or modified stationary sources to be located at the Morongo Reservation with potentials to emit (PTE) from 10 to 25 tons per year of VOC or NO<sub>x</sub> will not be subject to the major source requirements to meet the lowest achievable emission rate (LAER) and to offset emissions increases. Conversely, with or without our actions today, such sources with PTE 25 tons per year or more of VOC or NO<sub>x</sub> will continue to be subject to major source NSR, i.e., subject to both the LAER and offset requirements. Likewise, the regulatory requirements for sources with PTE less than 10 tons per year of VOC or NO<sub>x</sub> will also remain the same.

Thus, SCAQMD is correct that the proposed actions will facilitate construction and operation of new or modified stationary sources on the Morongo Reservation with PTE from 10 to 25 tons per year of VOC or NO<sub>x</sub> to the extent that such sources

## COMPARISON OF EMISSIONS ASSOCIATED WITH SOUTH COAST, COACHELLA VALLEY, AND MORONGO RESERVATION UNDER EXISTING CONDITIONS

	Emissions (tons per day)					
	South Coast <sup>a</sup>		Coachella Valley <sup>b</sup>		Morongo Reservation <sup>c</sup>	
Pollutant	Stationary Sources	Total	Stationary Sources	Total	Stationary Sources	Total
VOC	257	593	2.0	17.7	0.058	0.54
NO <sub>x</sub>	92	758	0.7	45.2	0.066	3.05
<sup>a</sup> Emissions estimates are for year 2008 as presented in table 3-1A (page 3-						

15) of the SCAQMD's Final 2012 Air Quality Management Plan, December 2012.

<sup>b</sup> Emissions estimates are for year 2008 as presented for the Salton Sea Air Basin portion of Riverside County in CARB's Almanac, Emission Projections Data, as published on CARB's website.

<sup>c</sup> The source for emissions estimates from sources associated with the Morongo Reservation is table 1 (page 13) of the attachment to a letter from Robert Martin, Chairman, Morongo Band of Mission Indians, to Deborah Jordan, Director, Air Division, EPA Region IX, dated May 29, 2009. These data reflect 2006 emissions, the most current year of emissions inventoried by the Morongo. We have no reason to expect that 2008 emissions associated with the Morongo Reservation would be significantly different than those estimated for 2006, and thus, we believe that the emissions estimates for the Morongo Reservation provide a reasonable basis for comparison with the regional emissions estimates prepared for 2008. Based on the Morongo emissions inventory, on-road mobile sources account for approximately 85% to 90% of total Morongo-related emissions of VOC and NO<sub>x</sub>. Stationary sources associated with the reservation account for approximately 2% to 11% of the total with the balance emitted by area sources.

As shown in the above table, total emissions associated with the Morongo Reservation comprise 0.09% and 0.4% of the VOC and NO<sub>x</sub> emissions, respectively, associated with all sources within the South Coast. The effect of today's actions relate to the stationary source fraction of Morongo's emissions, which amount to 0.058 and 0.066 tons per day of VOC and NO<sub>x</sub>, respectively (or 21 and 24 tons per year of VOC and NO<sub>x</sub>, respectively), and which comprise only 0.01% and 0.009% of the VOC and NO<sub>x</sub> emissions, respectively, within the South Coast. Clearly, one or even several new or modified stationary sources within the 10 to 25 tons per year range would have minimal or no effect on Coachella Valley when compared to the overall pollutant burden passing through the Banning Pass from the South Coast to Coachella Valley. Any new or modified stationary source

on the Morongo Reservation with a PTE large enough to impact Coachella Valley would almost certainly be subject to major source NSR and thereby subject to the LAER and emission offset requirements that would avoid such an impact.

SCAQMD Comment #4: We are concerned that EPA's actions would create an uneven playing field between sources located within the Morongo boundaries and similar nearby sources in the South Coast Air Basin, including the remainder of the Banning Pass. Indeed, sources locating on Morongo lands would also have an unfair advantage over sources in the adjacent Coachella Valley, because under SCAQMD rules even minor sources of most pollutants must obtain offsets, and these rules apply within the Coachella Valley. Moreover, major sources in both areas are subject to SCAQMD's BACT requirement, which is at least as stringent as federal LAER. While minor sources are subject to potentially less stringent BACT, and the minor source threshold in Coachella Valley is 25 tons per year, SCAQMD's BACT Guidelines for minor sources are generally the most stringent in the nation and are distinguished from the BACT for major sources only in that economic and technical feasibility may be considered. In short, new and modified stationary sources on either side of the Banning Pass, as well as in the remainder of the Banning Pass, will be subject to more stringent standards than sources seeking

to locate on Morongo lands. We are concerned that EPA's proposed action will create a "pollution island" within the Morongo area. Our concern is based on real and substantial experiences in which facilities located on Tribal lands have created problems in the adjacent communities. For example, EPA and SCAQMD have taken enforcement action against facilities located on Cabazon Tribal land near the city of Mecca in southeastern Riverside County.

Response to SCAQMD Comment #4: EPA notes that, with or without today's action, new or modified sources on the Morongo Reservation are subject to the requirements of EPA's Indian country NSR rule codified in CFR, Title 40, part 49 (76 FR 38748, July 1, 2011), which are in some respects less stringent than the corresponding requirements under SCAQMD's NSR rules that apply outside Indian country in both the South Coast and Coachella Valley. Specifically, under EPA's Indian country NSR rule, emissions offsets are not required for new or modified minor sources. However, with respect to control technology requirements, while the Indian country NSR rule does not require new or modified minor sources to meet BACT or LAER level of control, the rule does require EPA (or the Indian Tribe in cases where a Tribal agency is assisting EPA with administration of the program through a delegation) to conduct a case-by-case

control technology review to determine the appropriate level of control, if any, necessary to assure that the NAAQS are achieved, as well as the corresponding emission limitations for the affected emission units at the new or modified source. See 40 CFR 49.154(c). In carrying out this determination, among other considerations, EPA takes into account "[t]ypical control technology or other emission reduction measures used by similar sources in surrounding areas." 40 CFR 49.154(c)(1)(ii). Thus, the corresponding control technology requirements (i.e., minor source "BACT") that SCAQMD applies to minor sources subject to its authority would inform EPA's determination regarding control technology requirements and associated emission limitations for new or modified minor stationary sources on the Morongo Reservation.

Nonetheless, we recognize that our actions today will broaden the differences in NSR requirements in that new or modified sources on the Morongo Reservation with PTE between 10 and 25 tons per year of VOC or NO<sub>x</sub> will no longer be subject to LAER and emissions offset requirement that otherwise would have applied. We do not, however, foresee our actions as resulting in the "pollution island" effect about which SCAQMD is concerned. First, our actions today simply restore the major source threshold that had applied within the Morongo Reservation before



our 2003 approval of California's boundary change. The only difference between the regulatory context during the pre-2003 period and the context that will exist upon the effective date of today's action is that new or modified stationary sources in the Banning Pass subject to SCAQMD jurisdiction with PTE between 10 and 25 are now subject to major source "BACT," which differs from minor source "BACT" under SCAQMD's NSR rules, as explained by SCAQMD above, whereas such sources were subject to minor source "BACT" prior to our approval of California's boundary change request in 2003. We have no evidence that the Morongo Reservation was a "pollution island" during the pre-2003 period when the higher threshold applied, and the subtle differences between then and now described above with respect to minor source BACT and major source BACT under SCAQMD rules argues against the possibility that the Morongo Reservation will become a "pollution island" as a result of our actions today. It is important to note that, even with our actions today, the applicable NSR requirements within the Morongo Reservation (at a 25 tons per year major source threshold) would continue to be among the most stringent in the nation in keeping with today's classification of the Morongo Reservation as a separate "severe" nonattainment area for the one-hour and 1997 ozone standards.

SCAQMD Comment #5: EPA may not have adequate enforcement resources to ensure ongoing compliance on Tribal lands, even if the rules are equally stringent. For example, examination of the available information indicates that the Colmac Energy facility, which is identified as a major source under RCRA, was last inspected nearly 10 years ago. Tribes themselves also may not have adequate resources to ensure compliance. For example, in the mid-2000's, the Torrez-Martinez reservation was identified as home to at least 20 illegal dumps. Health hazards were created as a result of some of the dump material catching fire. EPA, the federal courts, the SCAQMD, the Tribe, and other organizations were all involved in attempting to resolve these issues.

Response to SCAQMD Comment #5: EPA's compliance and enforcement program extends to sources subject to EPA permitting jurisdiction, and to oversight of sources subject to the permitting jurisdiction of states, air districts, and tribes (where tribes have authority to issue such permits). The hypothetical prospect of new or modified stationary sources at the Morongo Reservation, whether permitted by EPA or by the Morongo Tribe (if and when the Tribe is authorized to issue such permits), will have essentially no effect on the scope of EPA's nationwide compliance and enforcement program and thus

essentially no effect on the resources needed to adequately meet the demands of that program. Moreover, facility inspections, while important, represent just one method for acquiring information in connection with compliance and enforcement.<sup>12</sup> Information requests under CAA section 114, for example, represent another method. Lastly, EPA does not believe that compliance issues that have arisen in the past with one tribe in any way portend compliance issues that may arise in the future with another tribe any more than one state's past actions portend future actions taken by other states.

SCAQMD Comment #6: We are concerned about the potential precedential effect of this decision.

Response to SCAQMD Comment #6: In this action, we are determining that our 2003 approval of California's request to shift the boundary between the South Coast and Southeast Desert eastward and thereby include the Banning Pass in the South Coast was in error as it pertains to Indian country in the Banning Pass, and because the Morongo Tribe is the only Tribe with Indian country that was affected by the eastward shift of the

---

<sup>12</sup> To the extent that SCAQMD cites infrequent inspections at the Colmac Energy facility as an example of inadequate EPA enforcement resources, EPA notes that since 1989, under a monitoring and enforcement agreement to which SCAQMD, EPA, and the Cabazon Band of Mission Indians are signatories, SCAQMD has been allowed entry onto the Cabazon Reservation to monitor and inspect the Colmac Energy facility, and thus the frequency of EPA inspections cited by SCAQMD bears little relation to the extent of compliance oversight for the Colmac facility.

boundary, the direct precedential effect of today's actions is quite limited. More generally, though, our 2003 action approved a State's request, in effect, to expand the area subject to more stringent CAA requirements and conversely to shrink the area subject to less stringent CAA requirements. We should have recognized at the time, but did not, that EPA, not the State, was changing the boundary with respect to Indian country located within the expansion area and thereby imposing the more stringent CAA requirements on Indian country as well. States rarely voluntarily request boundary changes that *increase* the stringency of requirements for their sources in the affected area, and thus, we have no reason to expect that similar circumstances culminating in our 2003 action and setting the stage for today's actions exist elsewhere with respect to California or other states and other tribes. Lastly, we note that we have previously established a number of separate tribal air quality planning areas, see, e.g., the separate listings for several tribes located within Arizona and California in 40 CFR 81.303 and 40 CFR 81.305, respectively, (i.e., particularly for the 1997 and 2008 eight-hour ozone standards), and thus, today's action does not establish a new precedent but rather is consistent with previous actions.

CVAG Comment #1: The creation of a separate air basin for the

Tribe will result in a less stringent definition of a major source threshold for New Source Review and may result in a lesser level of air pollution controls as currently established through its designation in the South Coast Air Basin. This could potentially result in the creation of a "magnet" for, and give an unfair advantage to, facilities locating at the Morongo Reservation relative to facilities in the adjacent areas under State jurisdiction.

EPA Response to CVAG Comment #1: CVAG is correct that the effect of today's actions will raise the applicable major source threshold for VOC and NO<sub>x</sub> from 10 tons per year to 25 tons per year for new or modified stationary sources to be located on the Morongo Reservation. This means that a new or modified stationary source proposed on the Morongo Reservation after the effective date of today's final actions with a PTE between 10 and 25 tons per year of VOC or NO<sub>x</sub> will not be subject to the same control technology (i.e., lowest achievable control technology) and emission offset requirements that would have applied if we did not finalize our actions. As such, the applicable requirements for new or modified stationary sources on the Morongo Reservation will return to those that applied before EPA's 2003 approval of California's boundary change request. The applicable minimum requirements for new or modified

sources on the Morongo Reservation will also mirror those that apply in Coachella Valley with respect to LAER and offsets, which adjoins the new Morongo air quality planning area to the east, although we recognize that California has chosen to go beyond statutory and regulatory minimum requirements with respect to other NSR requirements in both the South Coast and Coachella Valley. We have no evidence to suggest that the Morongo Reservation was a "magnet" for new emissions sources prior to our 2003 action to approve California boundary change request, when the less stringent major source threshold applied, nor do we have any reason to believe that the Reservation will become such a "magnet" as a result of EPA's actions today that simply return the Morongo Reservation to the statutory and regulatory context that applied prior to EPA's 2003 action.

CVAG Comment #2: Back in January 2011, CVAG sent a letter to EPA expressing concern regarding the Morongo Tribe's request for a separate ozone nonattainment area. EPA staff agreed to keep CVAG and SCAQMD apprised of EPA's actions on the Tribe's request but did not follow-through. Instead, CVAG was informed of EPA's January 2, 2013 proposed rule through another party. In May 2012, EPA designated the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard. EPA is using key findings from that decision as the basis for their current

proposed action. This designation action was again done without notification to or consultation with CVAG or the SCAQMD, although the proposed rule at 78 FR 55 stated that this decision will be made "after all necessary consultation with the Tribe and, as appropriate, with the involvement of other affected entities." In addition, in footnote 15 of the proposed rule, it states "EPA has consulted with the Tribe several times about this matter." This dangerously "paves the way" for the proposed action relative to the one hour and 1997 eight hour ozone standards.

EPA Response to CVAG Comment #2: CVAG is correct that EPA has adopted the analysis and rationale relied upon by EPA in establishing the Morongo nonattainment area for the 2008 ozone standard in support of EPA's proposal to revise the boundaries of the Southeast Desert (which includes Coachella Valley) and the South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. See pages 55 and 56 of the proposed rule.

CVAG objects to EPA's failure to notify or consult with CVAG about either the designations for the 2008 ozone standard or the actions proposed by EPA on January 2, 2013. As to the designations for the 2008 ozone standard, the process is set forth in CAA section 107 and involves (1) notification by EPA to

states of the requirement to submit recommendations of areas to be listed as nonattainment, attainment, or unclassifiable; (2) submittal to EPA of state recommendations; (3) review by EPA of the recommendations; and (4) notification by EPA to states of EPA's intention to modify any state recommendation and provision of an opportunity to such state to demonstrate why such modification is inappropriate. EPA also provided a similar process for tribes to submit, and for EPA to review and modify, recommendations for their areas of Indian country. There is no requirement that EPA notify states concerning tribal recommendations related to Indian country or that EPA notify tribes of state recommendations related to lands under state jurisdiction.

As to the proposed action to revise the boundaries of the Southeast Desert and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standard, EPA acknowledges that it agreed to keep CVAG apprised of our action and failed to follow-through prior to proposing this action on January 2, 2013. While EPA regrets the oversight, we note that such notification, other than through publication of the proposed and final rule in the Federal Register, is not required for the type of action that we proposed.



In its January 7, 2011 letter to EPA, CVAG raised two specific substantive concerns in connection with Morongo's May 29, 2009 boundary change request: (1) inclusion of the Morongo Reservation in Coachella Valley, and resultant use of Morongo ozone monitoring data, could jeopardize Coachella Valley's ability to meet the 1997 eight-hour ozone standard by the applicable 2019 attainment date; and (2) inclusion of the Morongo Reservation in Coachella Valley would impact Coachella Valley's ability to meet PM<sub>10</sub> objectives and to continue to attain PM<sub>2.5</sub> standards. EPA's decision to designate the Morongo Tribe as a separate nonattainment area rather than move the Reservation back into Southeast Desert (which includes Coachella Valley) alleviates both specific substantive concerns raised by CVAG in its January 7, 2011 letter to EPA. Please see our Response to SCAQMD Comment #3, above, for additional analysis concerning potential impacts on Coachella Valley of today's final actions.

Lastly, with respect to CVAG's cautionary note concerning EPA's consultation with the Tribe in connection with this action, we simply note that our proposed action, in part, derives from a request by the Morongo Tribe to create a separate nonattainment ozone area for the Tribe, and thus, it is perfectly natural and appropriate that EPA consult with the

Tribe about such a matter prior to proposing action. EPA would do no less for the State if responding to a state request. EPA notes that consultation with the Tribe is also consistent with the government-to-government relationship between federally-recognized tribes and the federal government.

CVAG Comment #3: The Coachella Valley is exposed to frequent gusty winds with the strongest and most persistent winds typically occurring immediately to the east of Banning Pass, which is noted as a wind power generation resource area. Given the geographic location of the reservation, to the Banning Pass and the Coachella Valley, the designation will most negatively impact the Coachella Valley's air quality. Located in the Southeast Desert AQMA area, the Coachella Valley will still be required to meet the NAAQS whether we generate pollutants or they are transported to our area.

EPA Response to CVAG Comment #3: As explained in detail in EPA Response to SCAQMD Comment #3, EPA does not foresee any impact to air quality in Coachella Valley as a result of EPA's actions to rescind our 2003 final action, as it pertains to the Morongo Reservation, and to revise the boundaries of the Southeast Desert (in which Coachella Valley is located) and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards.

Please see EPA Response to SCAQMD Comment #3, above.

CVAG Comment #4: The Coachella Valley has spent decades and millions of dollars striving to achieve attainment for the PM<sub>10</sub> NAAQS and we have been patiently awaiting redesignation of the valley for the federal PM<sub>10</sub> standard. A separate air quality planning area may adversely impact our efforts.

EPA Response to CVAG Comment #4: EPA's actions affect designations and classifications for the one-hour and 1997 eight-hour ozone standards. Our actions do not affect designations or classifications associated with any other NAAQS. Moreover, elevated PM<sub>10</sub> levels in Coachella Valley, unlike the South Coast where PM<sub>10</sub> exceedances are due primarily to PM<sub>10</sub> precursor pollutants (derived from direct emissions of VOC, NO<sub>x</sub> and other precursors), are "strongly tied to local fugitive dust problems."<sup>13</sup> Thus, we have no reason to anticipate new or more frequent exceedances of the PM<sub>10</sub> standard in the Coachella Valley due to the hypothetical increases in precursor VOC and NO<sub>x</sub> emissions from construction and operation of new or modified stationary sources on Morongo lands with PTEs between 10 and 25 tons per year.

CVAG Comment #5: In addition to the EPA's proposed action, CVAG

---

<sup>13</sup> See page 8-10 of the 2003 South Coast Air Quality Management Plan, August 2003. EPA approved the 2003 Coachella Valley PM<sub>10</sub> SIP on November 14, 2005 (70 FR 69081.)

also does not want EPA to consider any reversal of its previous decision which moved the Morongo Reservation from the Southeast Desert AQMA to the South Coast Air Basin. Such a reversal would again adversely impact our efforts to attain our federal air quality standards. Since the Morongo Reservation experiences more severe ozone air quality than the Coachella Valley, it needs to stay in the South Coast Air Basin. Designations should not be made based on adverse regulatory consequences on the affected constituent. Rather, designations should be based on ambient air quality.

EPA Response to CVAG Comment #5: In our proposed rule, we proposed to rescind the 2003 final action, as it pertains to the Morongo Reservation for the one-hour ozone standard, and to revise the boundaries of the Southeast Desert (Coachella Valley) and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. Our actions would not affect the designations or classifications of state lands, nor would they relocate the Morongo Reservation back to the Southeast Desert where it had been located prior to our 2003 final action. Thus, the ambient ozone conditions experienced on the Morongo Reservation would not be relevant in determining whether the Coachella Valley attained, or failed to attain, the ozone standards because only

data from monitors located within Coachella Valley would be used for that purpose. In terms of the Coachella Valley's potential emissions impacts on Morongo lands, the predominantly westerly wind patterns place Coachella Valley downwind of Morongo lands and thus Coachella Valley sources do not significantly impact Morongo ozone air quality. For additional details, please see page 6 of the technical support document. With respect to the basis for our proposed error correction and proposed revision to the boundaries, please see EPA Response to SCAQMD Comment #1, above.

CVAG Comment #6: EPA does not have sufficient resources to ensure ongoing compliance on Indian lands or adequate field enforcement staff to monitor any new air quality planning area.

EPA Response to CVAG Comment #6: EPA's compliance and enforcement program extends to sources subject to EPA permitting jurisdiction, and to oversight of sources subject to the permitting jurisdiction of states, air districts, and tribes (where tribes have authority to issue such permits). The hypothetical prospect of new or modified stationary sources at the Morongo Reservation, whether permitted by EPA or by the Morongo Tribe (if and when approved for such permits), will have essentially no effect on the scope of EPA's nationwide compliance and enforcement program and thus essentially no

effect on the resources needed to adequately meet the demands of that program. Moreover, CVAG provides no evidence that EPA resources are inadequate at the present time to address compliance or enforcement issues associated with emissions sources on the Morongo Reservation nor does CVAG explain how our proposed actions will result in an increase in compliance or enforcement costs to EPA.

Private Citizen Comment #1: The private citizen expresses support for SCAQMD's and CVAG's comments on the proposed rule, and adds that the proposed air quality planning area would be small, would be dominated by a single entity that controls its own development process, and has major air quality impacts in all directions affecting large populations. Further, the private citizen speculates that, in contrast to the current proposal, an air quality planning area dominated by a single corporation, rather than a single Tribe, would never be proposed.

EPA Response to Private Citizen Comment #1: Please see responses above to comments from SCAQMD and CVAG. With respect to the size of the proposed area and impacts to surrounding areas, the proposed rule takes into account the minimal amount of emissions associated with activities on the Morongo Reservation and corresponding minimal contribution to regional ozone violations and we believe that in these circumstances it

is appropriate to assign particular weight to the jurisdictional boundaries factor, and it is consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy. See page 56 of the January 2, 2013 proposed rule. Lastly, we find the analogy to a corporation to be inapposite due to the fact that Tribes, unlike corporations, are sovereign entities and therefore have inherent authority to control their own development process, much like states do.

### **III. Final Action**

Under CAA section 110(k)(6), EPA is taking final action to correct an error in a 2003 final action that revised the boundaries between nonattainment areas in Southern California designated under the CAA for the one-hour ozone NAAQS. EPA has determined that the Agency erred in the 2003 final action to change the boundary of the South Coast Air Basin, which enlarged the basin to include all of the Banning Pass area. In taking that action, EPA failed to consider the presence of Indian country (i.e., the Morongo Reservation) located therein. EPA thus failed to consider the status of the Indian country under the appropriate statutory and regulatory provisions when it evaluated and acted upon the State's boundary change request. EPA believes that its error resulted in regulatory consequences for the Morongo Tribe that justify making a correction. Thus,

EPA is rescinding the 2003 final action, as it pertains to the Morongo Reservation for the one-hour ozone standard. This action does not affect the designations and classifications of state lands.

Second, under CAA sections 107(d)(3)(A)-(C), 301(a) and 301(d), EPA is taking final action to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate nonattainment area for the one-hour ozone standard and to classify the Morongo Reservation as "Severe-17," i.e., consistent with its prior classification when it was included in the Southeast Desert.

Third, also under CAA sections 107(d)(3)(A)-(C), 301(a) and 301(d), EPA is taking final action to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard and to classify the Morongo Reservation as "Severe-17," i.e., consistent with its original classification when it was included in the South Coast.<sup>14</sup>

---

<sup>14</sup> In our proposed rule (footnote #8 at 78 FR 53), we indicated that if we finalize our proposed action to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard, EPA would withdraw our proposed action to reclassify the Morongo Reservation to "extreme" for the 1997 eight-hour ozone standard (74 FR 43654, August 27, 2009). (In 2010, we deferred final reclassification with respect to the Morongo Reservation (and the Pechanga Reservation) when we took final action to reclassify the South Coast for the 1997 eight-hour ozone standard (75 FR 24409, May 5, 2010).) Given today's final action and consistent with our statement from the proposed rule, EPA is



EPA is redesignating the Morongo Reservation as a separate air quality planning area for the one-hour ozone and 1997 eight-hour ozone standards based on our conclusion that factors such as air quality data, meteorology, and topography do not definitively support inclusion of the Reservation in either the South Coast or the Southeast Desert air quality planning areas, that Morongo Reservation emissions sources contribute minimally to regional ozone concentrations, and that the jurisdictional boundaries factor should be given particular weight under these circumstances.

As a result of these final actions, the boundaries of the Morongo nonattainment areas for the one-hour and 1997 eight-hour ozone standards will be the same as those for the Morongo nonattainment area for the 2008 ozone standard. Lastly, as of the effective date of this action, new or modified stationary sources proposed for construction on the Morongo Reservation will be subject to the NSR major source thresholds for "severe-17" ozone nonattainment areas, rather than the more stringent thresholds for "extreme" ozone nonattainment areas.

#### **IV. Statutory and Executive Order Reviews**

##### ***A. Executive Order 12866: Regulatory Planning and Review***

---

withdrawing our 2009 proposed reclassification action to the extent it relates to the Morongo Reservation in the Proposed Rules section of this Federal Register.

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action

merely corrects an error in a previous rulemaking and redesignates certain air quality planning area boundaries, and thereby reinstates certain CAA designations and corresponding requirements to which the affected area had previously been subject.

***B. Paperwork Reduction Act***

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An

agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

***C. Regulatory Flexibility Act (RFA)***

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's rule on small entities, I certify that this

action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any direct requirements on small entities. EPA is correcting an error in a previous rulemaking and redesignating certain air quality planning area boundaries, and thereby reinstating certain CAA designations and corresponding requirements to which the affected area had previously been subject. This action is intended to, among other purposes, facilitate and support the Morongo Tribe's efforts to develop a tribal air permit program by re-instating, within the Morongo Reservation, the less-stringent New Source Review major source thresholds that had applied under the area's previous "Severe-17" classification for the one-hour ozone standard and by aligning the boundaries for the Morongo nonattainment area for all three ozone NAAQS (i.e., the one-hour, the 1997 eight-hour and the 2008 ozone standards).

#### ***D. Unfunded Mandates Reform Act***

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result

in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal

mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

***E. Executive Order 13132: Federalism***

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action would merely correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

***F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments***

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." Under section 5(b) of Executive Order 13175, EPA may



not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this action would have tribal implications. In 2009, the Morongo Tribe requested that EPA create a separate area for the Morongo Reservation in part due to the adverse regulatory impacts resulting from the Agency's 2003 boundary change action. EPA consulted with representatives of the Morongo Tribe prior to, and following, the Tribe's 2009 boundary change request, concerning the issues covered herein. In today's action, EPA is responding to the Tribe's 2009 boundary change request and is taking final action that would eliminate the adverse regulatory impacts arising from EPA's 2003 boundary change action. As described herein, we agree with the Tribe that the boundary should be corrected to reflect their concerns. This action will neither impose substantial direct

compliance costs on tribal governments, nor preempt tribal law. Rather, the proposed action would relieve the Tribe of the additional requirements that flowed from the boundary change and corresponding change in CAA designations and classifications. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

***G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks***

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866,

and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

#### ***H. National Technology Transfer Advancement Act***

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this action.

#### ***I. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations***

Executive Order 12898 (59 FR 7629 (February 16, 1994))

establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. In this action, EPA is taking final action to correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject.

#### ***J. Congressional Review Act***

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

***K. Petitions for Review of this Action***

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control,  
Intergovernmental relations, National parks, Ozone, Wilderness  
areas.

Dated: September 4, 2013

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

40 CFR part 81 is amended as follows:

**PART 81-- DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart C - [AMENDED]**

2. Section 81.305 is amended as follows:

a. In the table for "California-Ozone (1-Hour Standard)" by revising the entry for "Los Angeles-South Coast Air Basin Area", by adding a new entry for "Morongo Band of Mission Indians" before the "Monterey Bay Area" entry, and by adding footnotes 5 and 6;

b. In the table for "California- 1997 8-Hour Ozone NAAQS (Primary and Secondary)" by revising the entries for "Los Angeles-South Coast Air Basin, CA", by adding a new entry for "Morongo Band of Mission Indians" before the "Los Angeles and San Bernardino Counties (Western Mojave Desert), CA" entry, and by adding footnotes (d) and (e).

The revisions and additions read as follows:

**§81.305 California.**

\* \* \* \* \*

California - Ozone (1-Hour Standard)<sup>4</sup>

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Los Angeles-South Coast Air Basin Area <sup>5</sup>	11/15/90	Nonattainment	11/15/90	Extreme.
<p>Los Angeles County (part)</p> <p>That portion of Los Angeles County which lies south and west of a line described as follows:</p> <ol style="list-style-type: none"> <li>1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;</li> <li>2. then north along the range line common to Range 8 West and Range 9 West;</li> <li>3. then west along the Township line common to Township 4 North and Township 3 North;</li> <li>4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;</li> <li>5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;</li> <li>6. then north and west along the Angeles</li> </ol>	11/15/90	Nonattainment	11/15/90	Extreme.



<p>National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);</p> <p>7. then west along the Township line common to Township 7 North and Township 6 North;</p> <p>8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;</p> <p>9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;</p> <p>10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);</p> <p>11. then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;</p> <p>12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.</p>				
Orange County	11/15/	Nonattainment	11/15/	Extreme.

Riverside County (part)	90 11/15/ 90	Nonattainment	90 11/15/ 90	Extreme.
That portion of Riverside County which lies to the west of a line described as follows:				
1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;				
2. then east along the Township line common to Township 8 South and Township 7 South;				
3. then north along the range line common to Range 5 East and Range 4 East;				
4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;				
5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;				
6. then west along the Township line common to Township 5 South and Township 6 South;				
7. then north along the range line common to Range 4 East and Range 3 East;				
8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;				
9. then north along the range line common to Range 2 East and Range 3 East to the				

Riverside-San Bernardino County line.				
San Bernardino County (part)	11/15/90	Nonattainment	11/15/90	Extreme.
That portion of San Bernardino County which lies south and west of a line described as follows: 1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Morongo Band of Mission Indians <sup>6</sup>	11/15/90	Nonattainment	11/15/90	Severe-17.
* * * *				

<sup>1</sup> This date is October 18, 2000 unless otherwise noted.

\* \* \* \*

<sup>4</sup> The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in California. The Monterey Bay, San Diego, and Santa Barbara-Santa Maria-Lompoc areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51, subpart X.

<sup>5</sup> Excludes Morongo Band of Mission Indians' Indian country in Riverside County.

<sup>6</sup> Includes Indian country of the tribe listed in this table. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \*

## California- 1997 8-Hour Ozone NAAQS (Primary and Secondary)

Designated Area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Los Angeles-South Coast Air Basin, CA: <sup>d</sup>	.....	Nonattainment	( <sup>2</sup> )	Subpart 2 / Extreme.
<p>Los Angeles County (part)</p> <p>That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the</p>	.....	Nonattainment	( <sup>2</sup> )	Subpart 2 / Extreme.

<p>Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.</p>				
Orange County	.....	Nonattainment	(2)	Subpart 2 / Extreme.
Riverside County (part)	.....	Nonattainment	(2)	
<p>That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range</p>				

4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.				
Pechanga Reservation <sup>c</sup>	.....	Nonattainment	( <sup>2</sup> )	Subpart 2 / Severe-17.
San Bernardino County (part)	.....	Nonattainment	( <sup>2</sup> )	Subpart 2 / Extreme.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common				

to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Morongo Band of Mission Indians <sup>e</sup>	.....	Nonattainment		Subpart 2 / Severe-17.
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

\* \* \* \* \*

<sup>c</sup> The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny, or withdraw Federal recognition of any of the Tribes listed or not listed.

<sup>d</sup> Excludes Morongo Band of Mission Indians' Indian country in Riverside County.

<sup>e</sup> Includes Indian country of the tribe listed in this table. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> This date is June 4, 2010.

\* \* \* \* \*

[FR Doc. 2013-22873 Filed 09/20/2013 at 8:45 am; Publication

Date: 09/23/2013]